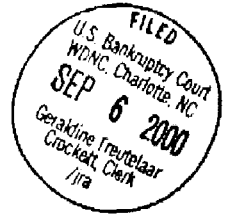


**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION**



IN RE:

DEBBIE CURRY BLACK,

Debtor.

DEBBIE CURRY BLACK,

Plaintiff,

vs.

FIRST CITIZENS BANK & TRUST  
COMPANY,

Defendant.

Case No. 93-40028  
Chapter 13

Adversary Proceeding  
No. 00-4019

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
GRANTING SUMMARY JUDGMENT FOR DEFENDANT;  
DENYING SUMMARY JUDGMENT FOR PLAINTIFF;  
and DENYING MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

This matter came before the undersigned in Shelby, North Carolina on Friday, August 25, 2000, upon cross motions for Summary Judgment and upon Motion of defendant to dismiss for lack of subject matter jurisdiction, and after hearing arguments from the plaintiff and the defendant and upon a review of the record, it is clear that the relevant facts in this matter are admitted and are not in dispute.

The admitted non-disputed relevant facts are as follows:

1. That on September 4, 1990, the plaintiff executed and delivered to Griffin Buick-Pontiac-GMC Truck, Inc. ("Griffin") a Note and Purchase Money Security Agreement in the original principal amount of Six Thousand Nine Hundred and no/100 Dollars

(16)

(\$6,900.00) ("the Note"). Griffin assigned the note to First Citizens Bank and Trust Company ("First Citizens"). As security for the note the plaintiff granted a security in a 1987 Pontiac bearing VIN 1G2JB51KQH7502347 ("the motor vehicle"). First Citizens' security interest was perfected under North Carolina law by the notation of its lien on the motor vehicle's certificate of title;

2. That on January 27, 1993, the plaintiff ("debtor") herein commenced her Chapter 13 case by filing a voluntary petition under the provisions of "The Code;"

3. That after a 341(a) meeting of creditors was held on March 11, 1993, the court confirmed the debtor's plan on March 22, 1993, which provided that all lienholders would retain their liens pending payoff or discharge and that all of the debtor's interest in property would remain vested in the estate pending the entry of discharge;

4. That proper notices of the case and plan, as required, were given and received by the involved parties;

5. That First Citizens filed a proof of claim;

6. That the claim, as allowed, was paid to First Citizens in full by the Trustee through the plan;

7. That the debtor made regular payments to the Trustee who made regular payments to First Citizens except that the debtor failed to make certain payments during the first half of 1996 and disbursements from the Trustee to First Citizens fell into arrears on account thereof;

8. That as a result First Citizens, in accord with its contract with Griffin, demanded and was paid in full by Griffin on or before June 24, 1996 and that thereafter First Citizens forwarded to Griffin all payments received from the Trustee;

9. That on June 24, 1996, First Citizens marked or noted on the face of the auto certificate of title that the lien had been "released" and filed the same in company records, and since the debt had not been paid in full to Griffin held the title pending discharge;

10. That the debtor finally paid out her Chapter 13 plan and a Discharge Order was duly entered on April 16, 1998 which discharged the debts due on said Pontiac vehicle;

11. That due to an oversight, the "released" certificate of title remained in the First Citizens' file;

12. That First Citizens' computer system showed plaintiff's debt was paid in full and that the plaintiff never requested the title to her vehicle from First Citizens. As a result thereof, the title "rested" in the file without further action or activity.

The uncontroverted facts continue as follows:

13. That over a year later on or about September 1, 1999, First Citizens received a Motion of the debtor seeking to reopen her closed case in order to proceed against First Citizens. Said Motion was granted on May 23, 2000;

14. That upon receipt of the Motion, First Citizens inquired of the debtor's attorney the reason for the activity and was informed on September 8, 1999 that the purpose was to facilitate

the filing of an adversary proceeding to recover damages for their failure to release the certificate of title, and on that same day, First Citizens released the plaintiff's certificate of title to her attorney and that eight (8) months later, the court granted the Motion to re-open and on May 30, 2000, this adversary proceeding was filed.

Based upon the above admitted, non-disputed and relevant facts, the court CONCLUDES as follows:

N.C.G.S. 20-58.4, Release of Security, provides that upon the satisfaction or other discharge of a security interest for which the certificate of title is in the possession of the secured party, the secured party shall within ten (10) days after demand and, in any event, within thirty (30) days, execute a release of his security interest, in the space provided therefor on the certificate....., and mail or deliver the certificate and release..... to the owner or other person authorized to receive the certificate for the owner.....

Assuming, for the purpose of this discussion, that the violation of N.C.G.S. 20-58.4 by a secured creditor in failing to release a car title within ten (10) days of a demand, or in any event within thirty (30) days following satisfaction or other discharge of a security interest, is an unfair and deceptive trade practice and that statutory damages are provided for by G.S. 25A-1 et seq. (Chapter 25A) and G.S. 75-1 et seq. (Chapter 75); the court concludes that the defendant is entitled to summary judgment

on all issues arising under said acts for the simple reason that they do not apply under the facts herein as set forth above.

G.S. 20-58.4 was enacted to apply to debtor-creditor relations between the parties, without the intervention of circumstances making recovery for technical violations thereof inequitable. In this case, after the relationship between the parties was established, the debtor filed her Chapter 13 bankruptcy proceeding. Thereafter, the debtor defaulted upon her payments to the Trustee, which triggered First Citizen's call upon Griffin under its recourse agreement to which Griffin timely responded. First Citizens marked its security interest satisfied on the certificate, and held the same in its file while forwarding future payments to Griffin who was entitled thereto. When the debtor ultimately paid her plan out and discharge was granted many months later, First Citizens neglected to remember or discover that it still held the debtor's title. The court concludes that First Citizens' neglect in this instance, under the circumstances of this case, is excusable. Bankruptcy courts should uphold state law actions and afford appropriate remedies to aggrieved parties; including debtors, where there is a violation of state law giving rise to such actions.

In this case, however, the debtor defaulted in her payments under her plan and her default set in motion a series of events which ultimately resulted in the First Citizens' technical violation of G.S. 20-58.4 giving rise to the cause action herein. The court concludes that First Citizens' failure to comply with the statute was due to inadvertence, oversight, or excusable neglect or

mistake caused in part by the debtor's default. Therefore, the court concludes that Summary Judgment should be granted the defendant for the reason that the debtor failed to request or demand action, after her own default precipitated the events supporting her alleged cause of action. The court notes the good faith of First Citizens in releasing the title immediately upon being informed of the problem. While the state statute uses the word "shall" it is not a statute of strict liability without fair and just regard for all of the facts and circumstances involved, particularly where the debtor's default is involved and the creditor's acts are such as are excusable and its overall conduct exemplifies good faith. The debtor's damages here, if any, could have been avoided by a simple letter or plan compliance in the first place.

Regarding First Citizens' Motion to dismiss for lack of subject matter jurisdiction, the court concludes that the same should be denied for the reason that it appears that his courts "related to" jurisdiction includes jurisdiction to enforce the full benefits of the debtor's discharge to the debtor, including a determination of state law matters as herein.

With regard to the debtor's Motion for summary judgment on its cause of action for violation of the discharge injunction against the defendant, the same must be denied for the reason that the undisputed facts clearly show that First Citizens took no action whatsoever to collect a debt. Further, its Motion for violations of the Confirmation Order likewise must be denied because no

violation has been shown herein. Likewise, the defendant's Motion in this connection should be granted for the same reasons.

Finally, the court concludes that the defendant is entitled to Summary Judgment as herein set forth and concluded, for the reason that the entire record shows that there is no genuine issue as to any material fact, and that the law requires the granting and denial of motions considered as delineated above, and to this end a separate order will issue simultaneously herewith.

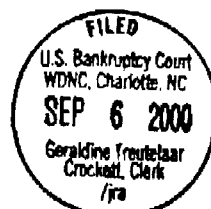
This the 5<sup>th</sup> day of September, 2000.



Dated as of date entered

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
SHELBY DIVISION



IN RE:	)	Case No. 93-40028
DEBBIE CURRY BLACK,	)	Chapter 13
Debtor.	)	
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DEBBIE CURRY BLACK,	)	Adversary Proceeding
Plaintiff,	)	No. 00-4019
vs.	)	
FIRST CITIZENS BANK & TRUST	)	JUDGEMENT ENTERED ON SEP - 6 2000
COMPANY,	)	
Defendant.	)	
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ORDER AND JUDGMENT  
GRANTING SUMMARY JUDGMENT FOR THE DEFENDANT;  
DENYING SUMMARY JUDGMENT FOR THE PLAINTIFF;  
and DENYING MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION

In accord with Findings of Fact and Conclusions of Law as entered this date herein, the court hereby enters its Order and Judgment as follows;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the defendant's motion to dismiss for lack of subject matter jurisdiction be and the same is, hereby **DENIED**;
2. That the defendant's motion for summary judgment on the plaintiff's state law cause of action be and the same is hereby **ALLOWED**, and the plaintiff's similar motion against the defendant is **DENIED**; and
3. That the defendant's motions for summary judgment on the plaintiff's Bankruptcy Code and Case violations be and the same are

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hereby **GRANTED**, and the plaintiff's similar motions against the defendant are hereby **DENIED**; and

4. Finally, it is **ORDERED**, that the plaintiff have and recover nothing of the defendant, go hence without day, and that each party pay its own costs.

This the 5<sup>th</sup> day of September, 2000.

Dated as of date entered

United States Bankruptcy Judge